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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,498	06/26/2003	Clifford D. Bennett	DBZ / 467P2	5227
26875	7590	05/03/2006	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202				A, PHI DIEU TRAN
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/606,498	BENNETT ET AL.	
	Examiner	Art Unit	
	Phi D. A	3637	

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 February 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,4-8,10-13,16,17,19-24 and 26 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,4-8,10-13,16,17,19-24 and 26 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

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1. PRODUCT BY PROCESS CLAIM:

“The subject matter present is regarded as a product by process claim in which a product is introduced by the method in which it is made. It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

The limitation of “injection molded” is a product by process limitation and thus treated according to the office policy set forth above.

Claim Objections

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims “4-5, the claims which follow claim 11” have been renumbered as claims 12-13. ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 4-5, 8, 10-13, 17, 19, 22-24, 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Lowery et al (6962029).

Lowery et al shows a chair comprising a unitary integrally formed body, including an upper receiving area and a lower base, the receiving area including at least two pairs of diametrically opposed notches (the notches where rebars 35 and 36 go through figure 1), the two pairs of diametrically opposed notches having different depths, the chair being adapted to rest on a planar support surface (inherently capable of doing so), the body having an inner surface and an outer surface, the surfaces being substantially complementary to each other to allow a plurality of chairs to be stacked within one another for storage and shipment (inherently so per the opening 5 and tapering shape of the legs 12), each notch comprising a bearing surface (32 figure 3) defined by a lip extending inwardly from the outer surface such that the bearing surface is cantilevered beyond the inner surface, each of the at least one pair of notches is connected by a bridge (16, 17a, 18a, 18b) therebetween, the bridges connecting the troughs of the notches, the base including a plurality of support legs (18b, 17a, 18a, 17b) extending downwardly from the receiving area and defining a plurality of apertures, the apertures operable to allow poured concrete to pass fluidly through the body (inherently capable of doing so), the base including four support legs, two of the support legs including foot members (48, figure 7) extending horizontally outwardly therefrom, the foot members extend from two diagonally opposite support legs, the support legs include a thickened band of material (8) around the apertures, the base including upper and lower support legs, the upper support legs (44-47, figure 8, the tapering sections) extending downwardly from the receiving area and defining upper apertures (the openings at the top between the upper legs), the lower support legs (the vertical legs which connect to the tapering legs, figure 8) extending downwardly from the upper support legs and defining lower apertures (the openings at the lower sections between the lower legs), the lower

support legs being longer than the upper legs (figure 8), the lower support legs including a thickened band of material (8) around the lower apertures, the apertures being arch-shaped (since the openings into the apertures are arch shaped), the pairs of notches being oriented ninety degrees from each other, the body is generally funnel shaped with the lower opening (5) being larger than the receiving area, a plurality of ribs (figure 7, the ribs 6, 49 connecting to the outer surface) and extending outwardly from an outer profile of the body to facilitate separating an individual chair from a stack (inherently capable of doing so), the bridge joining the medial, lowest portions of the notches.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6-7, 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lowery et al (6962029).

Lowery et al shows all the claimed limitations except for the other two support legs lacking a foot member.

Lowery et al (col 5 lines 34-38) discloses that the legs including at least one foot member (48).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Lowery et al's structure to show the other two support legs lacking a foot

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member because it would allow for the reinforcing of at least one pair of opposing legs as needed and save on the material for the pair of legs of needing extra support.

3. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lowery et al in view of Haslem et al.

Lowery et al shows all the claimed limitations except for the chair being made of polypropylene.

Haslem et al discloses that plastics such as polypropylene, polyethylene, polystyrene, nylon, polyvinyl chloride and the like are readily available equivalent material for forming a rebar chair.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Lowery et al's structure to show the chair being made of polypropylene because polypropylene is a readily available equivalent material to polyethylene for forming a rebar chair as taught by Haslem et al.

Response to Arguments

4. Applicant's arguments with respect to claims 1, 4-8, 10-13, 16-17, 19-24, 26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different rebar chair designs.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phi Dieu Tran A *PTA*
4/27/06

LANNA MAI
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Lanna Mai